

Digital Signature at Customs: Current Diagnosis

Final Report

Contract No.:	278-C-00-02-00210-00
Contractor Name:	Chemonics International, Inc.
USAID Cognizant Technical Office:	Office of Economic Opportunities USAID/Jordan
Date of Report:	June 2004
Document Title:	Digital Signature at Customs: Current Diagnosis Final Report
Author's Name:	IBLAW
Activity Title and Number:	Achievement of Market-Friendly Initiatives and Results Program (AMIR Program) ICTI 432.15 Digital Signature Implementation Legal Analysis

Funded by U.S. Agency for International Development

This report was prepared by Rand Hannun, IBLA, in collaboration with Chemonics International Inc., prime contractor to the U.S. Agency for International Development for the AMIR Program in Jordan.

Data Page

Name of Component: ICTI

Author: Rand Hannun, IBLA

Practice Area: N/A

Service Offering: N/A

List of Key Words Contained in Report:

Table of Contents

EXECUTIVE SUMMARY	1
SECTION I THE PROCESS AS-IS	2
A- DEPARTMENT AND LEGAL REFERENCE	2
B- THE REPORTS GENERATED.....	6
C- THE CASES DATABASE.....	7
D- RECONCILIATION OF CASES	8
E- FILES REFERRED TO COURTS.....	9
SECTION II THE DIAGNOSIS	9
SECTION III RECOMMENDATIONS.....	10

Executive Summary

This Report is intended to brief the readers on the process currently undertaken by the Cases Directorate at the Customs Department to manage and follow up on the customs violation committed.

The report identifies the process as have been told by the pertinent customs officials we met, in order to fully understand the limits and benefits of using the new Cases Database, which is an electronic system used to file, document and follow up on the customs violations and offences, and reconcile the files relevant thereto. This report serves as a first step to identify where the gaps in using the electronic system exist, if any, and accordingly fulfill the objective of this consultancy, which is to determine the applicability of the existing e-transactions law to pilot digital signature on the Cases database at Jordan Customs department.

This report is structured to discuss these matters in the following sequence: the actual process as have been reported by the Cases Directorate; the diagnosis of the current situation; and our recommendations are to follow at last.

The objective of this report is to identify the process utilized by the Customs Department for Cases management and follow up, and ultimately to explore the possibility to use the digital signature clauses stipulated in the E-Transactions Law thereon.

Section I The Process As-Is

A- Department and Legal Reference

The Cases Directorate depends in its work on the seizure reports organized by the customs officers at field or at the customs houses. It is actually where such reports are prepared that the Directorate undertakes the following up and management of the cases contained in such reports referred thereto by officers at field.

The Cases Directorate¹ undertakes to follow up on the customs offenses and other smuggling cases intercepted by customs officers and/or at customs centers. This follow-up includes verifying whether there is really a violation of the provisions of the law; identifying the correct legal provision that the violation is referenced to; and reconciling the violations in terms of concluding amicable settlement or referring the offence to court.

The manual system of intercepting customs offences involves two stakeholders primarily; the customs houses (centers) across Jordan, and the customs patrols. Upon interception of a violation, those persons take upon implementing the provisions of the following Articles from the Customs Law No (20) for the year 1998:

Article 184: Smuggling crimes and customs offenses shall be recorded in a verbal process prepared according to the procedures stipulated in this Law.

Article 185: A- The verbal process shall be prepared by at least two members of the Customs Department or the judicial police or any other official entity, as soon as possible after the customs offense or the smuggling crime is discovered. If necessary, the verbal process may be prepared by one official only.

B- Smuggled goods, or goods used in concealing the offense or the smuggling crime, and the means of transport thereof, shall be brought to the nearest customs house, if possible.

¹ The Directorate is a lower division within the National Customs Department. The Regulation for the Administrative Organization of the Department does not stipulate the formation nor define the tasks of this Directorate.

Digital Signature at Customs: Current Diagnosis

Article 186: The verbal process shall include the following:-

- A- The Place, date and time of its preparation in letters and numbers.*
- B- The names, signatures, ranks and jobs of those who prepare the verbal process.*
- C- The names of offenders or smugglers, their descriptions, professions, full addresses, and their domicile of choice if possible.*
- D- The class, quantity and value of seized goods, and to the extent possible, the duties and taxes thereupon.*
- E- Goods that have escaped seizure to the extent that they may be known or inferred. determined*
- F- Detailed facts, and statements of offenders, smugglers, and if possible, witnesses.*
- G- The legal Articles applicable to the offense or the smuggling crime, to the extent possible.*
- H- A statement affirming that the contents of the verbal process were read to the offenders and smugglers present then, and indicating whether or not they consented to and endorsed the contents of the verbal process.*
- I- All other relevant facts, including whether the offenders or smugglers were present or absent at the time of taking inventory of the goods.*

Article 187: A- Material events recorded in verbal process in accordance with Articles (185&186) of this Law, and witnessed by those who prepared the verbal process, shall be considered established facts, unless otherwise proven.

B- A verbal process which is formally defective shall not be considered invalid and may be returned to the preparer for completion. A verbal process which is factually incomplete may not be returned for completion. Verbal processes prepared according to the previous Articles, and incorporating testimonies, facts, and statements verified in other countries shall be of equal evidentiary force.

Digital Signature at Customs: Current Diagnosis

Article 188: A- Smuggling crimes may be verified and proven by all means of evidence, and not necessarily on the basis of seizure of goods within or outside the customs region. Declared goods which are inspected and cleared without comment or reservations by the Department regarding smuggling, may, nonetheless be subject to investigation for smuggling subsequently.

B- Customs offenses may be verified and proven by all means of evidence, and the importer shall bear liability for such offenses.

Article 189: Forgery claims must be submitted to the Customs Court of First Instance at the first court session, and in accordance with the court procedures in effect. If the court finds evidence and indications of forgery, it shall refer the forgery investigation to the Attorney General and shall postpone hearings until the forgery claim is settled. However, if the verbal process includes items other than the ones covered by the forgery claim, the court shall hear and reach decisions about the remaining items without delay.

Article 190: A single verbal process may cover more than one offense if the value of goods for each offense does not exceed five JDs, but subject to the limits and instructions set by the Director. Moreover, such goods may be confiscated by a decision of the Director, or a deputy thereof. Petitions for review of any kind shall not be admitted before payment by owners of the customs duties and other fees and taxes and fines due upon the goods.

Article 212: A-The Minister or a mandatory thereof may conclude an amicable settlement regarding smuggling crimes or what amounts thereto, whether before action is instituted, or during proceedings, but not after the judgment of first instance is reached. The settlement may be concluded with all or some of those liable for smuggling, for the entire crime, and at the terms stipulated in the settlement contract.

B- Upon the Director's recommendation, the Minister may, upon justification, overlook smuggling crimes or what amounts thereto, before action is instituted, or during the proceeding, but not after the judgment of the first instance is reached, and only if the fines involved do not exceed 500 JDs. However, justifications shall be admitted only in cases pertaining to travelers and the personal effects thereof.

C- Upon the Director's recommendation, the Minister may overlook customs cases involving transactions by official entities.

Article 213: A- In concluding amicable settlements, the Minister or a mandatory thereof may substitute the penalties and customs fines provided for in Article (206) of this Law by the following:-

- 1- A customs fine not less than 50 % of the compensation*
- 2- Confiscating the ascertained prohibited goods or goods whose importation or exportation is prohibited.*
- 3- The amicable settlement contract may provide for giving back the seized goods, and collecting the customs duties and other fees and taxes thereupon in return, in the case of goods, which may be imported or exported, and of restricted goods but subject to the approval of the restricting authority's.*
- 4- The amicable settlement contract may provide for giving back the means of transport and materials used in the smuggling in return for a fine not less than 20% of the value of the smuggled goods and not exceeding 50% of the value of the means of transport.*

B- A guide for amicable settlements shall be issued by the Minister and shall be published in the Official Gazette.

Article 214: Action shall abate upon amicable settlement.

The above Articles are intended to establish the process for the official documentation of customs violations that, if organized properly, such reports will be an official document and will be considered as established facts.

B- The Reports Generated

Currently, there are several reports used by Customs:

- 1- Inspection Report
- 2- Smuggled Items Seizure Report
- 3- Receipt and Amicable Settlement forms

1- Inspection Report:

This Report is used by smuggling patrols only. Ideally, this Report should have not been used, except that patrols argued that interception of smuggling offences require a speedy processing, which is not attained if the smuggling report as required by law was organized. **This Inspection Report contains a summary of the material facts involving the smuggling interception.**

This Report is filled at field, signed by the relevant parties and processed in full at the customs house (center).

As a matter of legal argument, this Report must be signed by both parties the officers and the violators. If not signed, then it may be rendered invalid, as understood by Article (187) of the Customs Law and other pertinent legislation.

2- Seizure of Smuggled Items Report:

Contains the information required by law and organized for customs offences and by all customs officers (including smuggling patrols after the Inspection Report is completed).

This Report is the complete one containing all information required by the Customs Law, as mentioned in the previously captioned Articles. Since the information required by law is pretty detailed, Customs patrols use the abridged version they have prepared

Digital Signature at Customs: Current Diagnosis

(Inspection Report) and subsequently the Seizure of Smuggled Items Report will be completed.

The Seizure of Smuggled Items Report is what is filled onto the Cases Database as it contains most of the relevant information. However, sometimes the database is actually loaded with the information prior to completing this form (this is due to the fact that relevant information may be obtained from other sources; such as the Inspection Report and the testimonial declarations by the officers).

3- Receipts and Amicable Settlement forms:

The receipt recognizes the payment of financial dues and is maintained by the financial directorate at the Customs Department. The Amicable Settlement Contract on the other hand is organized pursuant to the requirements of Articles (212)-(214) as mentioned above. **This contract is prepared manually and is not electronically enabled nor loaded onto the Database.**

C- The Cases Database

A computerized system has been developed to enable the electronic management of the information pertaining to customs cases in general. This system proved to be of high-yield results in following up on such cases, as it is interconnected between the Customs Department headquarters, and the customs offices across the country. The network connection allows for efficient and expeditious feeding of information onto the primary server at the headquarters.

The Cases Database is currently utilized to perform the following:

- 1- Update and comprehensively collect information regarding customs cases, which provides for diverse array of intelligence update and data to the Customs Department.
- 2- Follow up on customs cases in terms of closing reconciled violations (i.e. an amicable settlement contract is concluded), referring unsettled cases to the competent court, and close out files for cases which are proved to lack the proper legal adaptation/referencing.
- 3- Provide statistical information regarding shipments, importers, exporters and other business stakeholders, and amounts of duties, fines and other fiscal revenues

Digital Signature at Customs: Current Diagnosis

collected, although however information is not accessible to the public unless upon written approval by the Director General.

The Cases Database currently acts as a statistical facility that gathers information and channels them through within the jurisdiction of the Customs Department. **There has been no additional utilization of this service by other agencies such as the courts or the even the business community**, arguably due to the fact that most of the information thereon are of intelligence nature, which could or could not materialize into an action.

The major benefit reaped from the database is the volume of information that can be bundled in one unified form that is easily read and comprehended. **This feature allowed for this form to be accepted by courts, in exchange of the manual hand-written format that used to be presented thereto. It was reported that this new form (called the Customs Cases Form or “Form 9”) caused neither rejection nor questioning by the Customs Court. The reports populated by the system are being signed by the official printing them.**

D- Reconciliation of cases

When information is completed onto the database, one of the following occurs:

- 1- Violator comes to the Customs headquarters to reconcile the violation, whether the violation is a minor offence (for which duties/fines are paid to Customs and the violator receives a receipt), or the violation is a smuggling crime, which requires an amicable settlement contract to be concluded. **The amicable contract is manual and it is not available electronically.**
- 2- The Cases Directorate investigates the offence, and realizes that there is actually no proper claim by the customs officers, and the violation is considered nonexistent. In this case, the information will either be deleted from the system, or marked as settled.
- 3- Violation is either not settled amicably, or the violator never approached the Customs Department, and in this case, **the files are referred to the court. The forms are signed by the officers organizing them/printing them.**

E- Files referred to courts:

In case the violation is referred to court, Form 9 is printed and put into a file with the rest of papers organized by the customs officers (Smuggled Items Seizure Report and/or Inspection Report). **The decision by court is not always documented onto the database.**

Section II The Diagnosis

The following is a basic analysis of the above information and in specific the highlighted portions of this Report:

- 1- The different forms used by the customs enforcement units are confusing and manifold for no obvious reasons. As have been verified with the Cases Directorate, the names of the forms are also confusing, since the Seizure of Smuggled Items Report is really the Verbal Process organized pursuant to the requirements of law. The Cases Directorate confirmed that they are in the process of exploring possibilities for amending the forms and their names.
- 2- Subsequently, the usage of the Inspection Report is seemingly superfluous and incorrect, since even the Customs Patrols should be obliged to use and fill out the form containing all information needed by law. The argument that this Report is used to reduce the time needed to fill the Report is rebutted and challenged easily.
- 3- The Amicable Settlement Contract is an important document that completes the cases circuit, therefore, such Contract should be enabled electronically in order to allow for a proper closing (reconciliation) of the Cases papers. It seems odd that such contract is not enabled (prepared and possibly signed) within the Cases Database electronically, or at least, scanned and filed along with the papers relevant to the same case, although the fact that it has to be signed by the violator requires that the violator is available at the Customs Department physically, which defeats some purpose for electronic enabling thereof.
- 4- The exploitation of the Cases Database is sub-optimal, as it is currently used to merely provide for statistical information. The inter-connection between the main server and other customs centers across Jordan provides an excellent opportunity to move faster and more efficiently in seizing and intercepting the violations, and

Digital Signature at Customs: Current Diagnosis

subsequently following up effectively thereon. However, the connection nowadays only allows for information to be fed to the main computer at the Cases Directorate, whose concerns and current scope of work does not cater for optimum utilization of such information.

- 5- The reports generated by the Cases Database are only used for the Customs Department purposes and thereby. The Database is a private secure system for the Customs Department, it is not linked, connected nor “portalled” to terminals outside the Department. Therefore any reports generated by the system need to be printed out for other departments (e.g. the courts or any other official agency requesting information) as they are not linked and therefore not available electronically.
- 6- In closer perspective, the Cases Database is not used as the integrated electronic solution for all the Department’s operations and judicial formalities. An example for this is the Amicable Settlement Contract to be concluded with the violator, whereby this Contract is paper-based and not even scanned to be uploaded to the system. Also, the receipt for payment of fines and duties is not available electronically.
- 7- There is a need to sign almost every paper generated by the Cases Database, as the files are printed and sent to courts or other agencies, no electronic signature is available at the system nor acknowledged at this point. Also, the signature on such reports belongs to the officer sitting in front of the Cases Database terminal, who is not necessarily the officer intercepting the violation, or who signed the paper interception reports.
- 8- Upon issuing of a decision by courts, such decision is not documented on the Cases Database, which leaves some important follow-up information forgone, and therefore, important intelligence/statistical information regarding cases is incomplete and/or inaccurate.

Section III- Recommendations

The process explained above suggests, as a starting point, that the manual work flow used by the Customs Department is not optimum. There are ways to strengthen the process and reform certain ambiguous, incorrect and/or inefficient steps found in the manual process, prior to discussing the use of the Electronic Transactions Law.

Digital Signature at Customs: Current Diagnosis

Moreover, this Cases Database process does not seem to bear adequate qualifications that serve as a good model for the application of the digital signature offered in the Electronic Transactions Law. As the process suggests, the documents generated by the Cases Database are admitted and acknowledged by other pertinent bodies (Courts) for the purposes of settling a case, despite that such reports are not shared electronically. It should be noted that allowing the sharing of such documents is outside the scope of digital signature, and in the heart of the application of an E-Government initiative.

Another component of this process is the enabling of electronic signatures for officers authorized to access and/or generate reports out of the Cases Database. However, this is a component that will only become relevant where the manual process is properly streamlined and the level of security thereof is defined, if and when the Customs Department decides to do so. This invariability of standard operating procedures and guidelines governing the use of the Cases Database; the persons authorized to access such; the level of security needed and the authoritative features of the reports generated thereby is an important start to systemize the Database and ensure effectiveness thereof. IBLAW suggests working on this process beforehand, and identifying flaws in the manual process and rectifying them, before exploring the possibility for using e-applications.

Another important recommendation is to examine the E-Transactions Law thoroughly, and identify other important process where this Law is mostly efficient. An example for this is the e-payment of assessed duties by traders via their on-line registration at the Customs Department's website. As it has been announced by the Customs Department, and in its efforts to modernize its practices, an electronic gateway will be allowed on its website to allow registration of interested parties to access certain services by the Department. This is a good example to see how digital signatures will be used to authenticate documents submitted or authorize payments made.

The Electronic Transactions Law seems to allow for an optimum opportunity to create on-line registrations and e-payments models, as it stipulates the following:

Article (4) The provisions of this Law shall apply to the following:

Digital Signature at Customs: Current Diagnosis

A- Electronic transactions, electronic records, electronic signatures and any electronic data messages.

B- Electronic transactions approved by any governmental department or official institutions, in whole or in part.

Article (6) The provisions of this Law shall not apply to:

A- Contracts, instruments or documents that are drafted in accordance with special legislation in a certain format or in accordance with specific measures, such as the following:

- 1- Establishing and amending wills.*
- 2- Establishing and amending the conditions of the Waqf.*
- 3- Transactions disposing of immovable property, including agencies pertaining thereof, their title deeds, and establishing real rights, excluding lease contracts.*
- 4- Agencies and transactions relating to civil status.*
- 5- Notices relating to canceling or revoking water, electricity, health insurance and life insurance contracts.*
- 6- Bills of indictment, court proceedings, judicial notification notices and courts decisions.*

B- Securities, unless provided under special regulations issued by the competent authorities in accordance with the Securities Law in force.

Article (7) A- The electronic records, contracts, messages, and signatures shall be considered to produce the same legal consequences resulting from the written documents and signatures in accordance with the provisions of the Laws in force in terms of being binding to the parties concerned or in terms of fitness thereof as an evidential weight.

Digital Signature at Customs: Current Diagnosis

B- The legal consequence stated in Paragraph (A) of this Article shall not be excluded for reasons of conducting the transaction by electronic means so long as it complies with the provisions of this Law.

Article (31) If as a result of applying the authentication procedures in use, it becomes evident that these procedures were approved or commercially accepted or agreed upon between the parties, the electronic signature shall be considered as being authentic if it has the following attributes:

- 1- If it is unique in its connection to the pertinent person.*
- 2- Sufficient to identify its owner.*
- 3- Generated in a manner or means specific to that person and under his control.*
- 4- Connected to the record related thereto in a way that does not allow modification to that record after signing such without altering the signature.*

Article (33) The electronic record or any part thereof that carries an authenticated electronic signature shall be deemed an authenticated record for the whole record or that part as the case may be, if the signature was generated during the validity of the approved authentication certificate and was verified through compliance with the general identification number indicated in that certificate.

At last, the following are some specific recommendations regarding this process:

- 1- On the outset, forms prepared by the customs officials must be in the proper legal form to be admitted as established facts. The Law specifies the information to be provided on the seizure reports, and we find that not complying with the requirements of the Law should render the reports void, or at least challengeable.

Digital Signature at Customs: Current Diagnosis

- 2- There seems to be a need to review the whole process for enforcement of customs anti-smuggling operations. The review should tackle the process, the forms used, and the law possibly.
- 3- On other hand, the electronic operations need to be reviewed closely to identify the areas of sub-optimal use of the Cases Database, for example, the Amicable Settlement manual Contract should be examined to eliminate the barriers for its electronic enabling, as well as the financial receipt for payments.
- 4- The process of submitting the reports populated by the Database to other departments must as well be examined. As it appears, the problem is not only to exploit the program in its full potential to allow the electronic enabling of the whole Cases follow-up process, but it also related to inter-government connection and how the system can be further stretched to include the whole electronic cycle among government.
- 5- Digital signatures remain a foreseeable and potential component where the documents may be shared electronically with other agencies, as currently each document is printed out and signed to be recognized as an official document. Also, the signature on such reports belongs to the officer sitting in front of the Cases Database terminal, who is not necessarily the officer intercepting the violation, or who signed the paper interception reports, which again allows for further examination of the importance of digital signatures to authenticate such reports. However, these components will only become relevant where the manual process is identified, and where the Customs Department defines its policies and directions regarding the level to which the Cases Database is to be used.